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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

NATIONAL PARKS CONSERVATION)
ASSOCIATION, SIERRA CLUB,)
ENVIRONMENTAL DEFENSE FUND, and)
CENTER FOR BIOLOGICAL DIVERSITY,)

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, and MICHAEL)
S. REGAN, in his official capacity)
as Administrator,)

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

(Clean Air Act, 42 U.S.C. § 7401 *et seq.*)

INTRODUCTION

1. This is a suit to compel the Administrator of the United States Environmental Protection Agency (“Administrator” or “EPA”) to take action mandated by the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, to protect air quality in national parks and wilderness areas. The Clean Air Act and EPA regulations required states, by July 31, 2021, to submit plans to make reasonable progress towards remedying regional haze that impairs visibility in Class I national parks and wilderness areas. For the 34 states that did not submit such plans, the Act required

1 EPA to make a finding, by January 31, 2022, that those states failed to submit the required state
2 implementation plan. EPA has not made the required finding for any of the 34 states that failed
3 to submit plans.

4 2. This lawsuit seeks to compel EPA to take final action finding that those states
5 have not made their required submission. Such a finding begins a countdown clock that requires
6 final EPA action on regional haze plans. Given past and present delays in this essential clean air
7 program, EPA's action must be mandated by this Court.

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9 **JURISDICTION AND VENUE**

10 3. This matter arises under the Clean Air Act, 42 U.S.C. §§ 7401-7675. This Court
11 has jurisdiction over this action pursuant to 42 U.S.C. § 7604(a) (Citizen Suits) and 28 U.S.C.
12 §§ 1331(Federal question) and 1361 (Action to compel an officer of the United States to perform
13 a duty). The relief requested herein by Plaintiffs is authorized pursuant to 42 U.S.C. § 7604 and
14 28 U.S.C. §§ 2201, 2202, and 1361.

15 4. In accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. Part 54, Plaintiffs
16 served prior notice on the Administrator of the violations alleged herein and Plaintiffs' intent to
17 initiate the present action. Plaintiffs provided this notice to the Administrator by certified mail
18 posted on February 7, 2022, with copies by e-mail to the Administrator and other EPA officials.
19 A copy of this notice is provided as Exhibit A to this Complaint. More than 60 days have passed
20 since Plaintiffs served this notice pursuant to 42 U.S.C. § 7604(b), and the violations identified
21 in the notice are continuing.

22 5. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B), because
23 Sierra Club has its principal place of business in Oakland, California.

24 6. For the same reason, intradistrict assignment is proper in the Oakland Division.
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PARTIES

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2 7. Plaintiff National Parks Conservation Association (“NPCA”) is a national not-for-
3 profit corporation organized and existing under the laws of the District of Columbia with its
4 principal place of business in Washington, D.C. Its mission is to protect and enhance America’s
5 national parks for the use and enjoyment of present and future generations. Since NPCA was
6 established in 1919, it has advocated for protection of the natural environment (including air
7 quality) in and around the national parks, and worked to uphold laws and support new legislation
8 to protect natural, cultural and historical sites and the public’s enjoyment of them. Headquartered
9 in Washington, D.C., with 27 regional and field offices throughout the country, NPCA has 1.4
10 million members and supporters.

11 8. Plaintiff Sierra Club is a not-for-profit corporation organized and existing under
12 the laws of California, with its principal place of business in Oakland, California. Sierra Club is
13 a national membership organization with more than 832,000 members residing throughout the
14 United States, including each of the States as defined in 42 U.S.C. § 7602(d). Sierra Club’s
15 mission is to protect and enhance the quality of the natural and human environment, and its
16 activities include public education, advocacy, and litigation to enforce environmental laws.
17 Sierra Club and its members are greatly concerned about the effects of air pollution on human
18 health and the environment and have a long history of involvement in activities related to air
19 quality.

20 9. Plaintiff Environmental Defense Fund (“EDF”) is a not-for-profit corporation
21 organized and existing under the laws of New York, with its principal place of business in New
22 York, New York. EDF is a national membership organization with more than 2 million members
23 and supporters nationwide. EDF members reside in each of the States. EDF’s mission is to
24 protect the environmental rights of all people, including the rights to clean air and water and a
25 flourishing ecosystem. Since the organization was founded in 1967, a key aspect of EDF’s
26 mission has been to advocate control of air pollution for the benefit of human health and the
27 environment. EDF and its members are greatly concerned about the effect of air pollution on
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1 human health and the environment, and have a long history of involvement in activities related to
2 air quality.

3 10. The Center for Biological Diversity is a not-for-profit corporation. The Center for
4 Biological Diversity's mission is to ensure the preservation, protection, and restoration of
5 biodiversity, native species, ecosystems, public lands and waters, and public health through
6 science, policy, and environmental law. Based on the understanding that the health and vigor of
7 human societies and the integrity and wildness of the natural environment are closely linked, the
8 Center for Biological Diversity is working to secure a future for animals and plants hovering on
9 the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future
10 for all of us.

11 11. The Act requires regional haze plans to remedy existing and prevent future
12 human-caused visibility impairment in specified national parks, wilderness areas, wildlife
13 refuges, and other areas designated by the Act and EPA rules as mandatory "Class I" Federal
14 areas. 42 U.S.C. § 7491. Plaintiffs' members use and enjoy these Class I areas throughout the
15 nation for recreation and aesthetic enjoyment, including enjoyment of the scenic vistas. These
16 areas suffer from visibility impairment and poor air quality due to human-caused air pollution
17 and are threatened with future visibility impairment due to human-caused air pollution. Human-
18 caused air pollution in or from each of the states at issue may reasonably be anticipated to cause
19 or contribute to visibility impairment in Class I areas used and enjoyed by Plaintiffs' members.
20 Plaintiffs' members' use and enjoyment of these areas is therefore adversely affected by the
21 visibility impairment that the Act requires regional haze plans to remedy and protect against.

22 12. The acts and omissions of EPA alleged in this Complaint cause injury to Plaintiffs
23 and their members by delaying the submission, review, approval or promulgation, and
24 implementation of plans required by the Act to remedy and protect against visibility impairment
25 adversely affecting use and enjoyment of Class I areas by Plaintiffs' members. These delays
26 cause injury to Plaintiffs' members by prolonging existing, and allowing future, visibility
27 impairment that significantly interferes with Plaintiffs' members' use and enjoyment of Class I
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1 areas, and by nullifying or delaying measures mandated by the Act to remedy and prevent such
2 visibility impairment. The recreational, aesthetic, and environmental interests of Plaintiffs’
3 members have been and continue to be adversely affected by the acts and omissions of EPA
4 alleged in this Complaint.

5 13. The acts and omissions of EPA alleged herein further deprive Plaintiffs and their
6 members of procedural rights and protections to which they would otherwise be entitled,
7 including, but not limited to, the right to comment on and judicially challenge the adequacy of
8 regional haze state plans (or EPA action approving or disapproving such a submission), and the
9 right to ensure EPA effectuates its statutory duty to promulgate federal implementation plans to
10 address state planning deficiencies.

11 14. EPA approval of a regional haze state implementation plan (“state plan” or “SIP”)
12 renders the provisions of that SIP federally enforceable via both EPA action and citizen suits. An
13 EPA finding “that a State has failed to make a required submission or . . . that the plan or plan
14 revision submitted by the State does not satisfy the minimum criteria” would trigger a two-year
15 statutory deadline for the Administrator to prepare a federal plan to implement the Act’s
16 requirements for a regional haze plan in that state. 42 U.S.C. § 7410(c)(1). EPA’s failure to make
17 such findings causes an indefinite delay that thwarts Plaintiffs’ and their members’ rights to
18 comment on, be protected by, enforce, and (if necessary) challenge in court the adequacy of
19 regional haze state plans required by the Act, and to compel EPA to carry out its responsibility to
20 issue federal plans where state plans are disapproved.

21 15. The acts and omissions alleged in this Complaint also deprive Plaintiffs and their
22 members of information to which they would otherwise have access, specifically formal
23 published findings by EPA on whether state plans for regional haze do or do not meet all the
24 Act’s requirements and formal published determinations (in connection with promulgation of
25 regional haze federal plans) regarding the measures that are needed to implement the Act’s
26 regional haze requirements in the relevant states. If Plaintiffs and their members had access to
27 such information, they would use it to educate the public about air pollution throughout the
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1 nation and to advocate for adoption of measures to remedy and protect against regional haze in
2 Class I areas. EPA’s failure to produce such information deprives Plaintiffs and their members of
3 these benefits and thus causes them injury.

4 16. For these reasons, the Administrator’s failure to discharge the mandatory duties
5 alleged in this Complaint cause Plaintiffs and their members injuries for which they have no
6 adequate remedy at law. Granting the requested relief would redress these injuries.

7 17. Defendant Michael S. Regan is the Administrator of the United States
8 Environmental Protection Agency and is charged with the task of taking various actions to
9 implement and enforce the Clean Air Act, including those actions sought herein. Plaintiffs are
10 suing Mr. Regan in his official capacity as Administrator of EPA, and he officially resides in
11 Washington, D.C.

12 18. Defendant United States Environmental Protection Agency is the federal agency
13 charged with implementation of the Clean Air Act.

14 **BACKGROUND**

15 19. In 1977, to protect the “intrinsic beauty and historical and archeological treasures”
16 of national parks and wilderness areas,¹ Congress directed EPA to ensure the development and
17 implementation of Clean Air Act plans that ultimately eliminate all anthropogenic air pollution
18 impairing the nation’s most iconic landscapes. 42 U.S.C. §§ 7491(a)(1), (b).

19 20. EPA’s Regional Haze Rule requires the states (or EPA where a state fails to act)
20 to periodically issue state plans that contain “emission limits, schedules of compliance and other
21 measures” to ensure reasonable progress toward eliminating visibility pollution in Class I
22 national parks and wilderness areas by 2064. 42 U.S.C. § 7479(b)(2); 40 C.F.R. §§ 51.308(d)(1),
23 (d)(3), (f)(1), (f)(2); 64 Fed. Reg. 35,714, 35,727 (July 1, 1999).

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27 ¹ H.R. Rep. No. 95-294, at 203-04 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1077, 1282.
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1 21. The first of those periodic state plans were due in 2007. Despite that mandate—
2 and nearly fifteen years after the deadline—several states still do not have fully approved
3 Regional Haze plans for this first planning period.

4 22. In 2017, EPA revised the Regional Haze Rule. Among other changes, the revised
5 Rule required each state to “revise and submit its regional haze implementation plan revision to
6 EPA by July 31, 2021, July 31, 2028, and every 10 years thereafter.” 40 C.F.R. § 51.308(f).

7 23. By July 31, 2021, the Regional Haze Rule required a “comprehensive” state plan
8 revision that includes emission limits and other measures to fulfill the Clean Air Act’s reasonable
9 progress requirements. 82 Fed. Reg. 3,078, 3,116; 40 C.F.R. § 51.308(f).

10 24. The Administrator must determine no later than six months after the date by
11 which a state is required to submit a plan whether a state has made a submission that meets
12 minimum completeness criteria. 42 U.S.C. § 7410(k)(1)(A)-(B); 40 C.F.R. Part 51, Appendix V.

13 25. EPA commonly refers to the determination that a state has not submitted a plan
14 that meets the minimum completeness criteria, or has not submitted a plan at all, as a “finding of
15 failure to submit.”

16 26. The Administrator’s determination regarding whether states submitted plans
17 meeting the completeness criteria, or had failed to submit such plans, was due 6 months after
18 July 31, 2021, that is, by January 31, 2022. 42 U.S.C. § 7410(k)(1)(B).

19 27. On February 4, 2022, in accordance with 42 U.S.C. § 7604(b), Plaintiffs served
20 Defendants with a notice of intent to file suit against the EPA Administrator for the failure to
21 take mandatory, nondiscretionary action finding that 34 states had failed to submit to EPA the
22 required regional haze implementation plan revision due by July 31, 2021.

1 28. As of April 13, 2022, the date of this Complaint, the following 34 states have
 2 failed to submit to EPA the regional haze implementation plan revision due by July 31, 2021:

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4	Alabama	Louisiana	Oklahoma
5	Alaska	Maine	Oregon
6	Arizona	Minnesota	Pennsylvania
7	Arkansas	Mississippi	Rhode Island
8	California	Missouri	South Dakota
9	Colorado	Montana	Utah
10	Delaware	Nebraska	Vermont
11	Georgia	Nevada	Virginia
12	Hawaii	New Hampshire	West Virginia
13	Idaho	New Mexico	Wyoming
14	Illinois	North Dakota	
15	Iowa		
16	Kentucky		

17 29. As of the date of this Complaint, EPA has failed to take final action finding that
 18 those states failed to submit the required regional haze plan revision under 42 U.S.C. § 51.308(f).

19 30. On April 7, 2022, EPA announced “its intent to make findings that certain states
 20 have failed to submit regional haze implementation plans for the second planning period . . . by
 21 August 31, 2022.” Visibility and Regional Haze, U.S. Env’t Prot. Agency (Apr. 7, 2022),
 22 *available at* <https://www.epa.gov/visibility> (last visited Apr. 12, 2022). EPA advised “[s]tates
 23 wishing to avoid inclusion in the Findings of Failure to Submit [to] submit their second planning
 24 period SIPs” by that date. *Id.*

25 31. EPA’s announcement, effectively extending the deadline for states to submit
 26 updated regional haze plans from July 31, 2021, to August 31, 2022, has no legal effect.
 27 Specifically, EPA does not have authority to modify the deadline for state submission of revised
 28 regional haze plans via a website announcement or any authority to modify its statutory mandate
 to act on those submissions within six months of the regulatory deadline for submission. Even if

1 EPA had such authority—which it does not—the announcement does not legally require EPA to
2 take final action by August 31, 2022, thereby threatening continued indefinite delay.

3 **FIRST CLAIM FOR RELIEF**

4 **Failure to Issue the Statutorily Mandated Finding**
5 **That These States Have Failed to Submit the Required**
6 **State Implementation Plans Under the Regional Haze Rule**

7 32. Plaintiffs incorporate by reference the preceding paragraphs.

8 33. More than six months have passed since the July 31, 2021 deadline for each of the
9 above-named states to submit the required SIP revisions.

10 34. Each of the above-named states failed to submit the required state plan revisions
11 by the July 31, 2021 deadline.

12 35. Although its January 31, 2022 deadline under 42 U.S.C. § 7410(k)(1)(B) has
13 passed, EPA has not issued the statutorily mandated determinations of whether these states have
14 made a submission that meets the minimum completeness criteria.

15 36. Although its January 31, 2022 deadline under 42 U.S.C. § 7410(k)(1)(B) has
16 passed, EPA has not issued the statutorily mandated determination that these states have failed to
17 submit the required state plan revisions.

18 37. EPA’s failure to make such determinations constitutes a failure to perform acts or
19 duties that are nondiscretionary with EPA within the meaning of 42 U.S.C. § 7604(a)(2).

20 38. Therefore, the Administrator has violated, and is in violation of, his
21 nondiscretionary duties under 42 U.S.C. § 7410(k)(1)(B) by failing to timely determine whether
22 the 34 states, listed above, have submitted revised regional haze state plans that meet the
23 minimum completeness criteria of 42 U.S.C. § 7410(k)(1)(A). These violations are ongoing.

24 39. Further, the Administrator has violated, and is in violation of, his nondiscretionary
25 duties under 42 U.S.C. § 7410(k)(1)(B) by failing to timely determine that the 34 states, listed
26 above, have failed to submit revised regional haze state plans by the July 31, 2021 deadline, 40
27 C.F.R. § 51.308(f). These violations are ongoing.

RELIEF REQUESTED

Plaintiffs respectfully requests that this Court enter judgment:

1. Declaring that EPA’s failures to act alleged herein constitute failures to perform nondiscretionary duties required by 42 U.S.C. §§ 7410(k)(1)(B) within the meaning of 42 U.S.C. § 7604(a)(2);
2. Preliminarily and permanently enjoining the Administrator from continuing to violate these nondiscretionary duties;
3. Ordering the Administrator to complete all actions required by 42 U.S.C. § 7410(k)(1)(B) within 30 days of judgment;
4. Awarding Plaintiffs their reasonable costs of litigation, including attorneys’ fees, pursuant to 42 U.S.C. § 7604(d);
5. Retaining jurisdiction over this action to ensure compliance with the Court’s orders; and
6. Grant such other relief as the Court deems just and proper.

Dated: April 13, 2022

Respectfully submitted,

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